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No. 629

IN THE

Supreme Court of the United States

OCTOBER TERM, 1958

LOCAL 107, HIGHWAY TRUCK DRIVERS AND HELPERS UNION, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA,

Petitioner

v.

JOHN L. McCLELLAN, ET AL.,

Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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Petitioner

v.

JOHN L. McCLELLAN, ET AL.,

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

Petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the District of Columbia Circuit entered in the above-entitled case on December 22, 1958.

CITATIONS TO OPINIONS BELOW

The United States District Court in denying Petitioner's application for a temporary restraining order and motion for preliminary injunction did so, without opinion. No opinion has yet been rendered by the United States Court of Appeals on its decision.[1]

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[1] The reason for this unusual omission is probably due to the act that at the close of petitioner's rebuttal argument, petitioner

JURISDICTION

The judgment of the Circuit Court of Appeals was entered on December 22, 1958. On the same date the Court (Judge Burger not present) denied petitioner's motion for an order staying the acts complained of pending the filing of a petition for writ of certiorari. The jurisdiction of this Court is invoked under 28 U.S.C., Section 1254 (1).

QUESTIONS PRESENTED

1. Whether the Senate Select Committee on Improper Activities in the Field of Labor and Management, an investigatory committee of the Senate of the United States, may authorize and permit the District Attorney of Philadelphia County, State of Pennsylvania, to examine, inspect and copy, records and documents belonging to a labor union local, which the said Committee has in its possession by virtue of its subpoena duces tecum and as to which records and documents the said Committee has theretofore admitted that it was finished with the use of said records and documents for the purpose for which they were subpoenaed.

2. Whether the United States District Court for the District of Columbia has the power to enjoin a congressional investigatory committee from doing an act, outside the scope of its constitutional functions and not in pursuit of any legislative function, which infringes on members of a union restricting their exercise of the constitutional right to freedom of assembly which rights cannot thereafter be asserted, and which may result in the loss of their

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requested the Court to stay the acts complained of pending the rendition of a decision by the Court. The Court then conferred at the bench and announced that the judgment of the District Court was affirmed. Questions posed by the Court at oral argument (hereinafter discussed) indicate the basis of the Court's ruling.

present position in collective bargaining both as to management and other competing labor unions and for which irreparable harm there is no adequate remedy at law.

STATEMENT

The facts involved in this case are not in dispute and are set forth in detail in the findings of fact by the United States District Court (App. 1). Briefly, petitioner is a labor union comprising more than fourteen thousand members having their principal office in Philadelphia, Pennsylvania. Defendants are members of the Senate of the Congress of the United States and comprise the Select Committee on Improper Activities in the Field of labor and Management.

In September 1957, the said Committee issued a subpoena duces tecum upon the Secretary-Treasurer of petitioner union. Records and documents requested by said subpoena were immediately furnished to the Committee.

In January, 1958, petitioner instituted action in the United States District Court for the District of Columbia for the return of the subpoenaed records. Jurisdiction in said Court was predicated on diversity of citizenship and the amount in controversy exceeding Three Thousand Dollars. The action was in the nature of mandamus. In May of 1958, petitioner filed an amended complaint alleging that the Committee was finished with the use of the records and documents for the purposes for which they were subpoenaed. A motion to dismiss filed by the Committee, predicated on failure to state a cause of action and lack of jurisdiction was denied. In September of 1958, the Committee filed its answer admitting all the essential elements of the Amended Complaint, including an admission that they were finished with the subpoenaed documents for the purposes for which they had been subpoenaed.

In December, 1958, the Chief Counsel for the Committee authorized the District Attorney for Philadelphia County, State of Pennsylvania to inspect, examine and copy the subpoenaed records. An application was immediately made to the District Court in the same action then pending for a temporary restraining order against both the Committee and its members, restraining them from authorizing or permitting the said District Attorney to examine, inspect and copy the subpoenaed records as aforesaid. Upon a full hearing the application was denied. On December 12, 1956 the motion for preliminary injunction came on to be heard and was also denied. (App. pg. 1). On December 18, 1958 the Court of Appeals affirmed the ruling of the District Court denying the motion for preliminary injunction.

On December 22, 1958, the United States Court of Appeals for the District of Columbia Circuit denied the Union's motion for an order staying the acts complained of pending the filing of a petition for writ of certiorari. Application for such an order was then made to Mr. Justice Brennan of this Court who after hearing in chambers received the Committee's agreement to continue the administrative stay, then in effect, until this Court could act upon petitioner's petition for a writ of certiorari. By agreement, the administrative stay will be continued until disposition of the cause, in the event this Honorable Court grants this petition for writ of certiorari.

REASONS FOR GRANTING THE WRIT

The courts of the District of Columbia circuit are unique in that the venue of actions by private individuals against the national legislature or its committees is laid within their boundaries. See *Fischler* v. *McCarthy*, 2nd Cir. 218 F. 2d 164. Thus problems inherent in these cases rarely, if ever, are passed upon by the federal courts in other circuits.

During the past decade, the scope of investigation by Congressional committees has been greatly enlarged. Respondents in the instant case are authorized to investigate improper activities in the field of labor and management. From an economic standpoint every employer and employee within this nation fall within the sphere of this Committee's investigative power. This Court can take judicial notice of the number of persons who have been affected, directly or indirectly, for better or worse by investigations already conducted by this Committee. But the legal issues raised in the instant cause are not confined to this particular committee but are applicable to all Congressional committees now in existence or henceforth to be created.

The rights and duties of Congressional committees with respect to records they subpoena has never been considered by a federal court. Petitioner has contended, by using the analogy of the grand jury subpoena, that once a Congressional committee has finished with the use of records which it has subpoenaed, it is incumbent upon it to forthwith return the subpoenaed records to the person from whom they were subpoenaed.[2]

If this Honorable Court does not grant this petition for a writ of certiorari, a decision of the United States Court of Appeals will be left standing, from which it can be concluded that Congressional committees are under no duty to return subpoenaed records to the subpoenaee when they are finished with them, but may turn them over to whomever it please.

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[2] *United States* v. *Wallace & Tiersan Co.*, 336 U.S. 793 (1949); *Traub* v. *United States*, 67 U.S. App. D.C. 220, 226 F. 2d 781; *Application of Bendix Aviation Corp.* 58 F. Supp. 953 (D.C. S.D. N.Y. 1945); *State of Kansas* v. *Smithmeyer*, 110 Kan. 172, 202 P. 638 (1921); *In Re Atlas Lathing Corp.*, 29 N.Y.S. 2d 458, 176 Misc. 959; 97 C.J.S. Sec. 25 p. 395; Cf. *Maryland & Virginia Milk Producers Ass'n Inc.* v. *United States*, 102 U.S. App. D.C. 100, 250 F. 2d 425 (1957).

If the acts complained of occur, irreparable harm will be inflicted upon Petitioner in the following manner. Petitioner's right to exercise on behalf of its members the constitutional right of freedom of association and right therein not to reveal the complete membership, past or present, of said association will be lost forever. By Respondents permitting the the District Attorney of Philadelphia County, State of Pennsylvania, to examine, inspect, and copy these records, disclosure of the membership of the union, past and present, cannot be avoided. This right of the union is absolute in view of the fact that there is no legitimate substantial action being performed by the said Committee which would conflict with this right. See *National Association for the Advancement of Colored People* v. *State of Alabama, ex rel Patterson*, 2 L. ed 2d 1486 (1958).

Furthermore, the unauthorized invasion of Petitioner's property right will result in disclosures which may have a substantial bearing on Appellant's position in collective bargaining with regard to management, and in their position in jurisdictional disputes with other labor unions. One disclosure to the said District Attorney may in turn lead to many more disclosures on his part, all to the irreparable harm of some fourteen thousand (14,000) individuals.[3]

At examination of pertinent case law and Article I, Sections one through ten of the Constitution of the United States leads to the conclusion that a Congressional committee has neither the express or implied power to authorize a state agency to examine, inspect and photostat records in the committee's possession, with which they are admittedly finished.

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[3] Among the records subpoenaed were minutes of all executive general and special membership meetings during the prior seven years.

Nor can such action by a Congressional committee be upheld on the theory that a committee has a right to inform one and all of possible corruption in places outside of the government.[4]

If the activity complained of in the instant case causing irreparable harm for which there is no adequate remedy at law, is outside the scope of the Committee's constitutional power, and not constituting an abuse of power while in pursuit of a legislative function, then the sole remedy of the judiciary in order to afford petitioner protection would be that of an injunction.

The application for the temporary restraining order and the motion for preliminary injunction specifically prayed for an injunction against the agents of the Committee. The basis for such relief is clearly set forth in *Hearst* v. *Black*, 66 App. D.C. 313, 67 F. 2d 68. There the Court stated that had the bill been filed before or while the trespass was taking place, the district court could have enjoined the agents of the committee. The only reason given by counsel for respondents in their brief before the Court of Appeals was that the agents were not made parties defendant in the action. However, the original action was not a suit for an injunction but one against the committee to compel return of subpoenaed documents. The application for the temporary restraining order and preliminary injunction was collateral to the main action and intended to last only until the records were returned to the petitioner. Therefore the Court having jurisdiction over the principal could bind the agents only, by injunction provided they were properly served or had actual notice of the order.

Because authorization and permission to the District Attorney could easily be communicated by members of the Committee itself, even though their agents were enjoined,

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[4] *Watkins* v. *United States*, 354 U.S. 178 (1957), at page 200, footnote 33.

it became necessary to ask the Court to enjoin the members of the Committee.

The Court of Appeals in affirming the decision of the District Court, denying the motion for preliminary injunction made it apparent by their questioning during oral argument that the judiciary had no authority to enjoin a legislative committee.

We submit that requests for injunctions in such cases may fall into one of three categories:

First: Where the activity complained of is within the constitutional scope of the legislature and while they are in pursuit of their legislative functions.

Second: Where the activity complained of constitutes an abuse of power but is done in pursuit of the legislative function.

Third: Where the activity complained of is outside the scope of legislative constitutional power and is not done in pursuit of a legislative function.

Examples of the first category are found in *State of Mississippi* v. *Johnson*, 71 U.S. 475, where the State of Mississippi sought to enjoin the President of the United States from executing and carrying out an Act of Congress alleged to be unconstitutional. The Court properly held that the carrying out of laws, good or bad, was the duty of the Executive Branch of the government, and when operating within his function, he could not be enjoined. The dicta contained in that case, which might indicate that the legislative could not be restrained in its action by the judiciary, must be read in connection with a later sentence which said, "But we are fully satisfied that this court has no jurisdiction of a bill to enjoin the President in the performance of his official duties: . . ." (pg. 501). Similar instances of the first category are to be found in *New Orleans Waterworks Co.* v. *New Orleans*, 164 U.S. 471, and *Alpers* v. *San Francisco*, 32 F. 503.

Examples of the second category are found in *Hearst* v. *Black*, supra, and *Methodist Federation for Social Action* v. *Eastland*, 141 F. Supp. 729 (D.C.D.C. 3 Judge Court, one Judge dissenting).

The third category is exemplified by the type of case that *Youngstown Sheet & Tube* v. *Sawyer*, 343 U.S. 579 (1952) presented.

Your petitioner submits that the instant cause also is embraced within the third category.

It seems inconceivable that a federal court having jurisdiction over a congressional committee is limited in the exercise of its constitutional power by enforced omission of one of the weapons in its arsenal, the injunctive process. Such a conclusion as may now be drawn from the decision of the Court of Appeals in the instant case would seem to conflict with the responsibility placed upon the judiciary by the Constitution.[5]

Such a decision, on so important an aspect of our theory of government, should not be permitted to stand, unreviewed.

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted

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JANUARY 7, 1959.

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[5] *Watkins* v. *United States*, supra, at pgs. 198-199.

APPENDIX

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Civil Action No. 168-58

LOCAL 107, HIGHWAY TRUCK DRIVERS AND HELPERS UNION, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA

Plaintiff

v.

JOHN L. MCCLELLAN, et al.

Defendants

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This case having come on for hearing on plaintiff's motion for preliminary injunction and defendants' opposition thereto, and the Court having heard argument thereon and having considered the pleadings, affidavits and exhibits filed herein, the Court this 15 day of December, 1958, makes the following findings of fact and conclusions of law:

Findings of Fact

1. The plaintiff is a labor union having its office and headquarters in Philadelphia, Pennsylvania.

2. The defendants are members of the Senate of the United States and comprise the Select Committee on Improper Activities in the Labor or Management Field of the Senate.

3. Pursuant to a subpoena *duces tecum* issued by the defendants, the plaintiff turned over the books, records and documents set forth in Exhibit A attached to the complaint.

4. On January 23, 1958, plaintiff filed the present complaint seeking the return of all the books and records which it had turned over to the defendants.

5. On May 24, 1958, an amended complaint was filed alleging that the defendants had completed their use of the subpoenaed books and records for the purpose for which they were subpoenaed.

6. On September 15, 1958, the defendants admitted in their answer that they had completed their use of the books and records for the purpose for which they were subpoenaed.

7. On September 25, 1958, Judge G. D. Welch of the United States District Court for the Eastern District of Pennsylvania, in the case of *United States of America, Russell C. Harrington, Commissioner of Internal Revenue,* Plaintiffs v. *Raymond Cohen, Local 107, Highway Truck Drivers and Helpers Union, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America,* Civil Action 25264, issued an order enjoining the plaintiff Union from removing or causing to be removed from the defendant Committee the books and records here in issue until further order of that Court. An appeal is presently pending from that order. That order also directed that the Commissioner of Internal Revenue should have the authority and also granted the right to examine, inspect, copy and photograph the books and records here in issue.

8. On November 4, 1958, plaintiff moved for summary judgment in this action. Upon defendants' opposition, the Court, Pine, J., denied the motion for summary judgment on December 1, 1958. This denial was without prejudice as the Court had indicated that it considered the Committee to be required to maintain the records in its custody pursuant to the order of the United States District Court for the Eastern District of Pennsylvania in

which the Court directed that the present plaintiff not take any steps to remove the records from the Committee.

9. The defendant Committee early in December, 1958, authorized the District Attorney for Philadelphia County, Pennsylvania, to inspect and copy the books and records still in the possession of the defendants.

10. On December 4, 1958, plaintiff's application for a temporary restraining order was, upon defendants' opposition, denied by the Court, Pine, J.

11. The hearing on the preliminary injunction was held on December 12, 1958.

Conclusions of Law

1. A court of equity has no authority to enjoin a Senate Committee in the exercise of its legislative functions.

2. Legislative discretion in discharge of constitutional functions, whether rightfully or wrongfully exercised, is not a subject for judicial interference. *Hearst* v. *Black*, 66 App. D.C. 313, 87 F. 2d 68 (1936); *Methodist Federation for Social Action* v. *Eastland*, 141 F. Supp. 729 (D.C.D.C. 1956).

3. The preliminary injunction will be denied.

/s/

EDWARD A. TAMM,
United States District Judge